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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,430	01/22/2004	John J. Borzym	TMA-105-B	5191

7590

07/07/2006

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EXAMINER

RACHUBA, MAURINA T

ART UNIT

PAPER NUMBER

3723

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/762,430

Applicant(s)

BORZYM, JOHN J.

Examiner

M Rachuba

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,10 and 11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,3-6,10 and 11 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5, dependent from claim 4, limits "said hydraulic power means", but claim 4 only limits power means. The limitation "said hydraulic power means" lacks antecedent basis. Claim 6, dependent from claim 3, limits "said drive shaft", but no such structure has been previously recited. The limitation "said drive shaft" lacks antecedent basis.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 3-6, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmichael et al, 4,003,279 (cited in the IDS filed 22 January 2004) in view of Ward, 3,874,122 (cited in the PTO 892 mailed 10 August 2005). '279, figures 1-3 and column 4, lines 24-31, discloses a supported shear of the type which shears tube stock by lateral displacement of adjacent lengths of stock along a shear plane extending orthogonally through the stock; a mandrel to be placed within the stock (column 2, line 38); stationary tooling 2 for receiving and holding the stock, movable tooling 4 adjacent the stationary tooling for receiving the stock, and means (12, 35) for

alternately driving the moveable tooling in opposite directions through an orbital path relative to the stationary tooling. '279 does not disclose that the means includes first and second hydraulic cylinders, a pinion between two simultaneously, oppositely moving racks, including means for varying the power level of the means to drive the racks; the total linear displacement of the first rack at least approximately equal to one revolution of the pinion. It is noted that the hydraulic cylinders disclosed and claimed by applicant do not directly drive the tooling in the orbital path, but they do drive (in a linear motion) structure that is connected to other structure to convert the linear motion into the orbital (rotary) motion. '122, figure 2, and column 2, lines 39 through column 3, lines 12, teaches the use of two hydraulic cylinders to alternatively drive first and second rack in two opposite directions to rotate a pinion in opposite directions, to reciprocate a moving structure, the power level being variable. It would have been obvious to one of ordinary skill to have provided '279 with the linear drive of '122, in combination with other structure, such as the eccentric (9, 33) to reciprocate (oscillate) the eccentric (9, 33) disclosed by '279 in opposite directions, to actuate the movable tooling to orbit in opposite directions.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 3-6, 10 and 11 have been considered but are moot in view of the new ground(s) of rejection. Applicant has now claimed that the invention includes a mandrel to be placed within the stock. It is the examiner's position that one of ordinary skill would not use a mandrel with the device

taught by Davis. Therefore, applicant's amendment has resulted in the new grounds of rejection set forth above.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

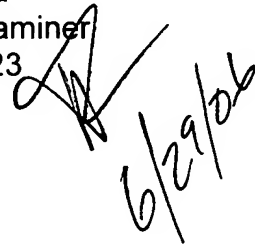
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M Rachuba whose telephone number is 571-272-4493. The examiner can normally be reached on Monday-Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M Rachuba  
Primary Examiner  
Art Unit 3723

Handwritten signature and date 6/29/06.